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ABSTRACT

The pamphlet briefly describes various facets of the law and legal system in Wisconsin, and defines many legal terms. The objective is to further public understanding of the law and of the legal profession, particularly in Wisconsin. No attempt is made to answer specific legal questions. Sections cover civil and criminal law; the federal court system including the Supreme Court, the Circuit Court of Appeals, and district courts; the state court system including the state Supreme Court, Court of Appeals, county judgas, and municipal judges; the juvenile court; delinquency; how a decision is reached in court; the adult criminal court; eight possible consequences of a criminal record; civil law relating to buying a home or renting; wills, estates, and property; the purpose of laws relating to marriage, divorce, and adoption and where to find specifics in the Wisconsin Statutes; a definition and examples of torts; the lawyer's role in personal injury cases; and reasons for having a lawyer. The address of the Wisconsin Bar Foundation concludes the pamphlet. (CK)

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THE LAWS ARE YOURS

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"The Laws Are Yours" is the latest in a series of projects undertaken by the Lawyers' Wives of Wisconsin to further public understanding of the law and of the legal profession.

Lawyers' Wives of Wisconsin has approximately 1400 members in 24 charter county groups throughout the state. Among their varied activities are Law Day observances, welcoming of newly naturalized citizens and the recently completed law-related education program, "You and the Law." A scholarship for a law student is presented annually to each Law School in Wisconsin.

We hope that you, the reader, will have a better understanding of the Wisconsin legal system after reading "The Laws Are Yours." We have not attempted to answer specific questions about the law since facts, situations, circumstances and persons differ and the application of the law to such cases may also vary. For specific answers to legal advice it is suggested that you consult a lawyer in your community.

We would appreciate your comments:

Please send them to:

Lawyers' Wives of Wisconsin
c/o 4001 Haven Avenue
Racine, Wisconsin, 53405

1979

PEOPLE + Laws = ORDER

INTRODUCTION

We live in a land of freedom, free to do as we wish and to go where we please, as long as we do not infringe on the rights of others. It has been said that one's right to swing his fist ends at the point where the other fellow's nose begins.

Law began when man discovered he could not live alone – that there had to be rules in order for people to live together. If there were no laws, think of what society would be like.

The law affects everyone of us from the time we are born until the day we die and then even after in probate. It affects us from the time we get up in the morning until we retire at night. When we get up in the morning, think how we conform to the rules of society – the fact that we get dressed is conformity to a law. When we get into our cars and drive down the street, we conform to laws.

Our basic legal rights are set forth in the U. S. Constitution and its 24 amendments. The freedom they protect imposes upon each of us a fundamental responsibility – that of respecting the freedom of every other citizen. If a law does not serve us, we have the opportunity to work through our legislators and, by exercising our right to vote, to change laws. To fully exercise our freedom and accept our responsibilities we must be familiar with the workings of our legal system.

WHAT THE LAW IS ALL ABOUT

Think of your family as a small unit where rules are set in order to make life run smoothly. If one of the rules is broken, the matter is handled within this small unit. But if you break a law you have to deal with a larger family – society. You have to deal with the consequences and you will be held accountable to society.

What kind of a person are you? Are you honest or do you try to cheat your fellow man? Do you obey the law or do you try not to get caught? Are you a knowledgeable citizen? The choice is yours; as a citizen you have to be aware of the consequences of not living within the law and of your accountability to society. In court, ignorance of the law is no excuse.

CIVIL AND CRIMINAL LAW

Civil law regulates private rights and agreements between people. It has to do with the sale of property, business contracts, probate, etc. If you have a disagreement with someone over money or property, and you are unable to resolve the disagreement, you may take the matter to a civil court. In civil matters two or more persons oppose each other and present their case to a judge or jury who then renders a decision.

Criminal law defines and prohibits offenses to protect the public. Penalties are provided for those who violate criminal law. In criminal cases the defendant is the person accused of a crime by the State, and the State's case against the defendant is presented by the District Attorney. The defendant is represented by a privately employed attorney or, if he is indigent, a Public Defender attorney.

OUR COURTS
YOUR ACCESS TO JUSTICE
FEDERAL COURTS

The federal court system consists of a Supreme Court, Courts of Appeals, District Courts and some special courts. The state court system follows a similar pattern. There is one Supreme Court of the United States which sits in Washington, D.C. The present court consists of nine justices.

Below the Supreme Court are Courts of Appeals identified as Circuit Courts of Appeals. Wisconsin is in the 7th Circuit. The Circuit Court of Appeals for the 7th Circuit sits in Chicago and hears appeals from the District Courts of Wisconsin, Illinois and Indiana. Nine judges are authorized by Congress for the Court of Appeals for the 7th Circuit. Other Circuits may have a larger or smaller number, as determined by Congress.

There are two District Courts in Wisconsin identified as the Eastern District of Wisconsin which sits in Milwaukee and the Western District which sits in Madison. The Act of Congress which established the District Courts for Wisconsin provided that the Eastern District Judge could also sit in Green Bay and Oshkosh and that cases in the Western District could also be heard in Eau Claire, LaCrosse, Superior and Wausau. The press of court business in recent years has meant, however, that most if not all matters are heard in Milwaukee and Madison.

Congress has authorized four judges for the Eastern District and two judges for the Western District.

All federal judge appointments are made by the President subject to the consent of the Senate and all are for life, subject to the power of Congress to impeach.

The basic trial court in the federal system is the District Court, just as the Circuit Court of Wisconsin is the basic trial Court where most cases in Wisconsin originate.

If the result in the District Court is unacceptable to a litigant (person engaged in a lawsuit) there is a right of appeal to the Court of Appeals. Most cases become final when the Court of Appeals reaches its decision. The U. S. Supreme Court has the discretion in most cases whether to accept an appeal from the Court of Appeals.

The federal courts generally decide federal constitutional and federal law questions and some cases involving diversity of citizenship.

STATE COURTS

The county courthouse is the principal place for court proceedings, although Municipal Court proceedings are usually held elsewhere. Most judicial proceedings, with a few exceptions such as mental hearings, Juvenile Court proceedings and John Doe proceedings, are open to the public. If there is more than one Circuit Court, specialized work may be assigned to specific branches of the court.

The Wisconsin Supreme Court sits in Madison, and the four divisions of the Court of Appeals are based in Milwaukee, Waukesha, Madison and Wausau.

The Wisconsin Constitution, Article VIII, established the judiciary. The judicial power of this state is vested in a unified court system consisting of one Supreme Court, a Court of Appeals and a Circuit Court. The legislature is empowered to authorize each municipality to establish a Municipal Court with jurisdiction limited to actions and proceedings arising under ordinances of the municipality.

Justices of the Supreme Court are elected for a term of 10 years, and judges of the Court of Appeals and Circuit Courts are elected for a term of 6 years. If a judge dies in office, resigns, or is removed from office for reasons other than disability, the Governor fills the vacancy by appointment, and an election is held the following year to elect a judge for a full term. Only one Supreme Court justice can be elected in any one year, and the justice having the longest, continuous Supreme Court service serves as Chief Justice. Judicial elections are nonpartisan and are held the first Tuesday in April. Members of the judiciary may not serve after July 31 following the date such person reaches age 70, with the exception that the Chief Justice may appoint retired judges to serve under certain circumstances.

The Supreme Court of Wisconsin consists of 7 justices. The Court of Appeals has 12 judges. The Supreme Court designates the Chief Judge of the Court of Appeals and that court presides in panels of three judges in four statutorily defined districts. Three judges are elected in each district.

Each county elects one or more circuit judges as determined by the legislature. Appellate court judges and circuit judges may be assigned to preside in any district or county in the state by the Chief Justice. A Judicial Commission monitors the judiciary and can for cause initiate reprimand or removal proceedings before the Supreme Court.

The municipal judges are elected for two years unless the ordinance provides for a term not exceeding four years.

The proceedings in a Circuit Court are recorded. Proceedings are not required to be recorded in a Municipal Court. By paying a statutory fee, any defendant in a proceeding in the Municipal Court may have the matter transferred to the Circuit Court. Except for Municipal Courts, eligibility to serve in the judiciary requires that the person be a licensed lawyer for the preceding five years and be an elector within the jurisdiction of the court.

Persons aggrieved by a decision of a Municipal Court may have the matter reviewed in a Circuit Court, and Circuit Court cases may be reviewed in the Court of Appeals and/or the Supreme Court. The Supreme Court may select the cases it chooses to review upon application by a litigant or on the Supreme Court's own initiative.

A simplified procedure for handling cases involving eviction or matters involving $1,000 or less in the Circuit Court is identified as small claims procedure and enables people to represent themselves; although people may represent themselves in any court proceeding. Persons choosing to represent themselves should be acquainted with certain statutory time limits applicable to judicial proceedings.

The salaries of all members of the judiciary, except municipal judges, are established and paid by the state. The Chief Justice is the administrative head of the judicial system and exercises administrative authority pursuant to procedures adopted by the Supreme Court.

JUVENILE COURT
DELINQUENCY AND CONSEQUENCES

Each of the 72 counties in Wisconsin has a special court – just for young persons. It is called the Juvenile Court, and exercises jurisdiction over persons under the age 18. However, persons 16 and 17 may lose juvenile status if after a hearing the Juvenile Court judge transfers the case to the adult court. In that event such a person is treated as an adult.

The first Juvenile Court in the United States was created in the State of Illinois in 1899. Wisconsin has a special law dealing with children who come to the Juvenile Court, and it is referred to as the Children's Code. In Wisconsin this code was revised and made current in 1978. One reason for revision was to have the juvenile system in all counties operate in substantially the same manner. The goal of the Juvenile Court is to help delinquent young people through programs of rehabilitation.

Many matters are referred to a Juvenile Court, and they come generally under the following headings:

A. Delinquency

B. Matters relating to children who are in need of protection and services. This includes children who are the victims of physical abuse, incest, neglect, or who have run away.

C. Ordinance violations (city, village and town)

A delinquent act is essentially an offense which, if committed by an adult, would be a crime.

Because the person committing the act is under the age of 18, it is referred to as a delinquent act. Usually, matters relating to delinquency are referred to the Juvenile Court by police officers. The first step in the referral process is for the police officer to refer the matter to a Juvenile Intake Unit. These exist in all 72 counties within the State of Wisconsin. The Intake Unit has authority to either refer the matter to the district attorney and the court or to attempt to divert the case. In Wisconsin, approximately half of the matters handled by Juvenile Intake are diverted.

Diversion can be to social service agencies, drug counseling, a runaway home, pregnancy counseling and many other supportive agencies which try to help children and their families. The theory of diversion is to meet the needs of a child in a supportive way in order to deal with the cause of the child's coming into the juvenile justice system.

If the case is sent to the court by Intake, the Court must then make a decision concerning the innocence or guilt of the child. If the child is innocent, the petition alleging delinquency is dismissed. If the child is delinquent or found to have committed the prohibited act or acts, the Court must then make a decision concerning what disposition or sentence should be imposed. The most serious disposition would be placement of the child in a correctional setting (Wales or Lincoln Hills). A more lenient approach would be to impose a simple reprimand from the bench and then to remand the child to the custody of his or her parents. Examples of other dispositions which are possible include supervision for a period of time by the county probation department, referral to counseling, community service work, spending a day in prison, restitution, apology, and placement of the child outside of the home (foster home, group home, residential treatment center). The overall goal of the disposition is to help the child and to insure the safety of the community in terms of future delinquent acts.

After participating in a rehabilitation program, if a child returns to the Juvenile Court, because of committing another act, then the Juvenile Court usually would take firmer action in making disposition. Children who are aged 16 or 17 can have their cases referred to adult court under certain circumstances. If this happens, these juveniles are then treated in all respects (including sentencing) the same as an adult.

The delinquent child's juvenile record, with certain exceptions (voluntary disclosure by the child, use in sentencing in adult court after conviction for a later adult crime), is confidential. The reason for this is to protect the child from the consequences of a record which was developed while the child was still in his or her formative years. It is understood that children, in the process of growing up, will make mistakes. While society does not condone these mistakes, society also makes every attempt to insure that these mistakes are not used to unduly or unfairly hinder the child when he or she becomes an adult. In Wisconsin, almost half of all crimes are committed by young people under the age of 18. Clearly, the philosophy of confidentiality underlying the Children's Code is an attempt by society to protect children from the consequences of their acts. Yet, society does demand accountability from the juvenile while at the same time acting to insure that the child is both assisted and rehabilitated.

In applying for a job or seeking admission to college, no person is required under law to disclose a juvenile record. A delinquency finding does not affect the youth's subsequent right to vote upon reaching the age of 18. Confidentiality of court records will not insure that a young man or young woman will get a given job or gain entry to a particular school. It does help to prevent a single thoughtless act or offense from spoiling an opportunity earned later in life. Through the confidentiality of the records of the Juvenile Court, a delinquent child is given an opportunity to succeed and progress as an adult without the millstone of a public juvenile record. If further crimes are committed, the adult court has access to the Juvenile Court record. If no crimes are committed, the record remains permanently confidential in the Juvenile Court.

HOW A DECISION IS REACHED IN A COURT

When cases are heard in court, the decision is made by either a jury or a judge. In either case, a decision must be made based on the evidence presented in court through testimony, exhibits, and the applicable law.

In criminal cases and juvenile delinquency matters it is the burden of the State to prove a case beyond a reasonable doubt. In all other cases, the burden is either to establish a position by clear and convincing evidence or a greater preponderance of the credible evidence. In arriving at a decision, the facts proven in court must be measured against the applicable proof standard and any other law which applies to a given case situation.

The objective of the trial is to produce a fair and just decision. At times, a litigant may feel that the decision is not correct. In those cases, a person may appeal the finding of a jury or a judge to a higher court. This involves additional time and cost.

In making a decision, the judge is not allowed by law to speculate or utilize personal prejudices or points of view. The right of appeal, as with erasers on pencils, helps to correct mistakes.

ADULT CRIMINAL COURT

It is possible to categorize crimes in many ways. Generally, crimes are either against person or against property. Crimes are also divided under the headings of felonies (crimes punishable by possible incarceration for a period of more than one year in a state prison) and misdemeanors (crimes punishable by incarceration for a year or less). It is also possible for a Judge in most felonies and misdemeanors to impose a fine – the more serious the crime the larger is the possible dollar penalty. Felony crimes usually are considered to be more serious, and they include acts such as murder, armed robbery, kidnapping, rape and burglary. Misdemeanor crimes are considered less serious, and they include offenses such as disorderly conduct, petty theft, and simple battery.

Violations of some laws, such as city ordinances, are not felonies or misdemeanors, but are offenses that are deemed civil offenses and may be punishable by forfeiture; if the forfeiture is not paid there may be short-term confinement, unless the judge finds the person too poor to pay the forfeiture. City ordinances deal with such things as traffic offenses and disturbing the peace.

If a person is arrested by a police officer because of the alleged commission of a crime, that person has a right to phone his family or friends or lawyer to inform them of what has happened. The arrested person also has a right to be brought before a judge or court commissioner as soon as possible so that bail can be established. An arrested person who is accused of a crime also has a right to have an attorney. A person may hire his own attorney if he can afford to do so, or a State Public Defender attorney or other court-appointed attorney is utilized to represent an accused man or woman.

A charge involving a crime is resolved through a trial to either a jury or a judge at the defendant's option. Upon a finding of not guilty, the charge is dismissed. If the accused person is found guilty, then a disposition is made which may include a fine, jail, probation, or a combination of the three. Restitution, community service work, an apology or other rehabilitative activities also may be ordered.

The decision of a judge or a jury in criminal matters can be appealed by a person who is found guilty. In Wisconsin, the appeal is first to the Court of Appeals and then, in some cases, to the Wisconsin Supreme Court.

CONSEQUENCES OF A CRIMINAL RECORD

When a person is convicted of a crime, there are many possible consequences:

A. The convicted criminal may find it much more difficult to get and retain a job.

B. The person convicted of a crime may find it more difficult to be bonded through an insurance company and often this is a requirement of a job.

C. Certain job positions may not be open at all to those convicted of a crime. At times, this can be true relative to law enforcement positions and other jobs that involve licensure by the State of Wisconsin.

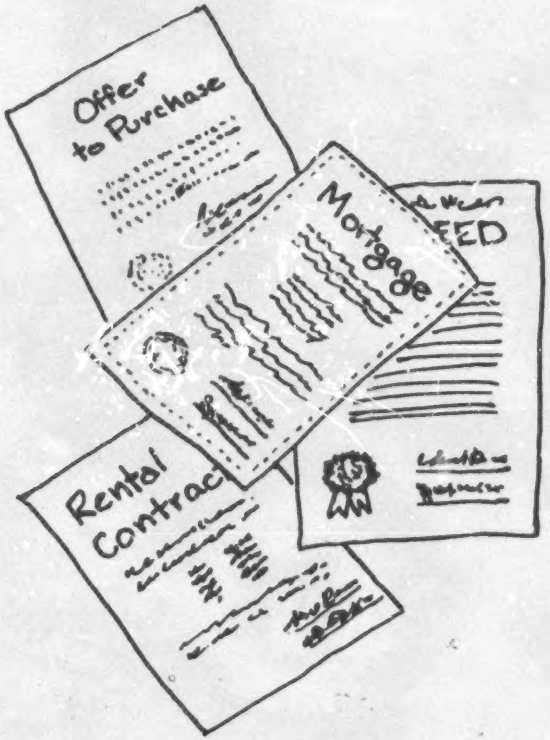
D. The Army, Navy, Marine Corps, and Air Force may not accept into service or give a commission to a person convicted of a crime.

E. A person convicted of a felony crime does not have a right to vote while serving the sentence or on probation.

F. An adult criminal record remains a public document for life in most cases; the record in certain cases may be expunged by a judge upon request.

G. A conviction for a crime is a matter which could be brought up in subsequent court actions to impeach the credibility of a person who acts as a witness in a court of law. The prior conviction may be considered by a judge or a jury in evaluating the credibility of a witness who was convicted of a crime.

H. Many civil service and other government jobs may be closed to those who are convicted of a crime.



CIVIL LAW AND YOU

Buying Your Home

Since the purchase of a home is probably the largest single purchase a person makes during his/her lifetime, it is important that clear title passes to the purchaser, and if a mortgage is involved, the purchaser be aware of the financial obligation under that mortgage. The contract of purchase entered into protects the buyer and the seller. There are specific requirements which prudent buyers and sellers should be aware of such as, the contract should be in writing, there should be an accurate description of the property, there should be a statement of what personal property is included (fixtures, hardware, refrigerator), the amount of annual taxes and proration, obligation to provide insurance, type of title (warranty deed, quit claim deed, land contract), when possession is to begin and what the penalty would be if the seller does not make the home available on that date, terms of payment, proper execution and witnessing of all documents by parties to the contract.

Renting

When renting property, the tenant and landlord each have certain rights. A lease is usually drawn up so that all terms are made clear and each party knows what each is responsible for. For those who don't have a written agreement the statutes provide some rules governing the rights of parties.

Never sign anything unless you have read it and understand it.

YOU, YOUR WILL, ESTATE AND YOUR PROPERTY

An estate consists of the total value of one's property, which is the interest a person has in lands and personalty, at a given time. An estate includes real property, personalty, such as cash, bank accounts, bonds, personal effects, household goods, life insurance, contracts, and special assets such as social security and pension death benefits.

Property interests can be either solely owned, jointly owned, tenancy with one or more other people, (tenancy in common) or a life estate, (having the use of property during one's lifetime only).

A will designates disposition of property after death. Anyone over age 18 can make a will which must be executed in the presence of two witnesses. To be valid the court must find the testator was of sound mind and memory and not under undue influence. When making a will a person designates a personal representative to manage the distribution of the estate under the supervision of the Court. If a person dies without a will, the law designates the disposition of the property to the heirs.

A will should be kept in a safe place such as a bank safe deposit box. It should be reviewed periodically to ascertain its adequacy to present circumstances.

MARRIAGE DIVORCE ADOPTION

The laws concerning marriage, divorce and adoption vary from state to state.

In Wisconsin the laws concerning marriage are found in Chapter 245 of the Statutes. Marriage, so far as its validity at law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting is essential, and which creates the legal status of husband and wife. The intent of the law of the State of Wisconsin concerning marriage is to promote the stability and best interests of marriage and the family.

In Wisconsin the laws concerning marriageable age, who shall not marry, the validity of marriage, pre-nuptial physical examinations and tests and unlawful marriages, are designed to accomplish the intent of the law.

In Wisconsin the laws concerning divorce are contained in Chapter 247, and it is the purpose of these laws to emphasize the present and future needs of the parties to actions affecting marriage and of their children, if any. It is also the purpose of the law to move away from assigning blame from marriage failure and to promote the settlement of financial and custodial issues in a way which will meet the real needs of all concerned persons as nearly as possible.

It is the purpose of the law to recognize children's needs for close contact with both parents, to encourage joint parental responsibility for the welfare of the minor children and to promote expanded visitation. Wisconsin's No-Fault Divorce Law is not intended to make a divorce, annulment or a legal separation easier to obtain. It is intended to promote an equitable and reasonable adjudication of the economic and custodial issues involved in marriage relationships.

Chapter 48 and Chapter 882 contain the procedures and requirements for adoption in Wisconsin. It is the purpose of these chapters to promote the best interests of adoptive children and to see that they are placed in the best adoptive homes available. It is also the intent of these laws to provide for the protection of children from adoption by persons unfit to have responsibility for raising a child, and to protect children who are legally established in adoptive homes from interference by their natural parents.

Copies of the laws which affect marriage, divorce and adoption in Wisconsin are available through the County Clerk in all Wisconsin County Courthouses.

TORTS

A tort is defined as a wrongful act, not including a breach of contract or trust, which results in injury to another's person, property, reputation or the like, and for which the injured party is entitled to compensation.

Actions arising under tort are civil as contrasted to criminal. Damages may involve injury to persons or to property. One must establish that someone is responsible for damage because of a breach of a legal duty.

Examples of tort actions are actions for injuries that arise from the use of a defective product, from an automobile accident or from a dog bite.

At the trial of an action for personal injury and/or property damage, the plaintiff endeavors by the testimony of witnesses and exhibits such as x-rays, pictures and the like, to prove that he was damaged and that the defendant was at fault and caused the damage. The defendant likewise, by the testimony of witnesses and exhibits, endeavors to show that he was not at fault or that if he was, there was also fault on behalf of the plaintiff and that the damages were not as great as the plaintiff alleges. From all of the evidence (testimony, exhibits and the like) the jury or judge renders a verdict or decision.

THE LAWYER'S ROLE IN PERSONAL INJURY CASES

The area of personal injury law permits a party who has been injured to transfer some of the economic effects of the injury to the one legally responsible. Product liability actions serve a useful societal function in focusing the public's attention on the design of products with safety as a paramount consideration. Such cases, through their conduct in a public forum, draw attention to unnecessary casualties and serious injuries and foster more effective accident prevention methods.

The role of the lawyer in this field of law is to provide the necessary skill in the investigation, evaluation and presentation of a case so that a person, if justified, is compensated for personal injuries received. Today's modern society is more complex with computers, atomic reactors and other man-made machines. When injuries occur in today's world, it requires sophisticated investigative tools to determine whether a manufacturer is legally responsible for unsafe acts or products. Often there is no clear cause-effect relationship in personal injuries. A chain of causes may result in an injury.

The lawyer also plays a role in the evaluation of a person's injuries. Knowledge of medical science, physical therapy and rehabilitation services assist in evaluating a particular injury. Experience with how other juries have decided similar cases is also a great aid.

Last, but most important, the lawyer is an advocate for his/her client's cause. The presentation of a personal injury case necessitates clear reasoning, careful preparation, and study not only of the law but of human behavior. A lawyer, by education and experience is qualified to assist you.

SHOULD YOU HAVE A LAWYER?

Regular check-ups by medical and dental professionals can detect potential health problems and prevent possibly serious consequences. Periodic consultations with an attorney can help avoid legal problems. A lawyer is a trained professional person who studies, researches, interprets, evaluates and gives advice. A lawyer investigates, negotiates, and litigates for the client being represented. With our adversary system both sides of a controversy can be represented by an attorney, although it is not required, and have their rights protected and their position heard in a court of law. This is your Access to Justice.

In Wisconsin a lawyer has continuing legal educational requirements to fulfill to maintain his/her license to practice law. Lawyers cannot change the law nor do they write the laws. When you hire a lawyer, the lawyer represents you and your best interests.

THE LAWS ARE YOURS

The laws and the legal system exist for you and because of you. By taking advantage of the many opportunities available in your community to learn about your legal rights and responsibilities, you will help to improve our legal system and to promote respect for the law.

The young people of the world become the adults of tomorrow, and the hope of the future. They hold the key to unlock the door to a better way of life. The decision of what kind of a society we will have is in their and our hands.

As Abraham Lincoln said, "Let reverence for the laws be breathed by every American mother to the lisping babe that prattles on her lap. Let it be taught in schools and seminaries and colleges. Let it be written in primers, spelling books, legislative halls, and enforced in courts of justice, and in short, let it become the political religion of our nation."

LET THIS BE OUR CHALLENGE

For further information on Wisconsin's law-related public service programs, contact:

WISCONSIN BAR FOUNDATION
Box 7158
402 W. Wilson Street
Madison, WI 53707
(608) 257-3838 or
1-800-362-9082 in Wisconsin

Programs of the Wisconsin Bar Foundation include:

- . . .Project Inquiry for public and parochial school students
- . . .Law for the Deaf
- . . .Judge for Yourself television program
- . . .Library/Resource Center for lawyers and teachers
- . . .Lawyer Hotline (1-800-362-9616)

We acknowledge with appreciation the Judges, Lawyers and Lawyers' Wives who volunteered to make this booklet possible.